

**United States Department of Labor
Employees' Compensation Appeals Board**

B.H., Appellant

and

**DEPARTMENT OF DEFENSE, NATIONAL
GEOSPATIAL-INTELLIGENCE AGENCY,
Springfield, VA, Employer**

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**Docket No. 20-0268
Issued: August 11, 2021**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 15, 2019 appellant, through counsel, filed a timely appeal from a September 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a foot condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On November 21, 2018 appellant, then a 56-year-old police officer, filed an occupational disease claim (Form CA-2) alleging that he developed posterior tibial tendinitis and Achilles tendinitis, with developing plantar fasciitis causally related to factors of his federal employment, including wearing police/tactical combat boots for approximately seven years and excessive walking. He explained that he was required to be on foot patrols for long hours over the years and had been required to wear “improper footwear” for work and, as a result, developed issues with his Achilles, heel and arch. Appellant noted that he first became aware of his condition and realized it was caused or aggravated by factors of his federal employment on September 20, 2018. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on September 20, 2018. Appellant attached an undated attending physician’s report (Form CA-20) by Dr. Rhonda L. Davis, a podiatrist, who noted that she treated appellant from September 6 through November 1, 2018 due to painful feet. Dr. Davis diagnosed posterior tibia tendon dysfunction (PTTD) and plantar fasciitis. She checked a box marked “Yes” indicating her belief that appellant’s condition was caused or aggravated by employment activity, noting that appellant related that pain is worse with the demands of walking distances.

In a development letter dated January 29, 2019, OWCP informed appellant that he had not submitted sufficient evidence to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

Appellant subsequently submitted an undated narrative statement indicating that he began working for the employing establishment in 2011 as a federal police officer. His duties consisted of foot patrols, primarily with two-hour periods of desk duty between rotations, and this was for a 12-hour period of working three days on, two days off, two days on, and then two days off, repeatedly. Appellant noted that the employing establishment consisted of a north building and a south building, approximately the length of a football field and a half per building, with eight floors per building. Its standard operating procedures outlined that he was not to deter from the prescribed footwear, which was a police/tactical combat style boot, and that sneakers or deviations were not permitted. Appellant asserted that he was not aware that the footwear was not conducive to the amount of standing and walking that he was being required to do. He indicated that he had documented his complaints throughout the years regarding injuries to his feet. Appellant indicated that his feet would hurt, but he just thought that it was fatigue from all the excessive walking. He noticed that his pain progressively worsened and immediately informed his sergeant, who advised him to get insoles, which he did. Appellant contended that his pain continued to worsen to the point where it was unbearable and he could not stand on his feet in the morning when he awoke.

By decision dated March 13, 2019, OWCP denied appellant’s occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a January 10, 2019 report, Dr. Davis indicated that appellant had been under her care for five months and she recommended that he be placed on desk duty while receiving treatment for his lower extremities indefinitely. In a prescription note of even date, she referred appellant to physical therapy.

OWCP also received physical therapy notes dated February 28, 2019.

On April 8, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on August 12, 2019.

Appellant subsequently submitted reports dated September 6, 2018 through January 10, 2019 from Dr. Davis who continued to note appellant's complaint of pain in his feet and diagnoses of plantar fasciitis and PTTD. Dr. Davis also diagnosed Achilles tendinitis and pronation syndrome and in her September 13, 2018 note, indicated that appellant had been unable to perform his agility test due to pain from walking in boots for the last seven years.

Appellant also submitted a September 9, 2019 note from Amber Morrow Sullivan, a nurse practitioner, who diagnosed plantar fasciitis, chronic foot pain, left, midline low back pain without sciatica, chronic pain in right foot, and neuropathy. Ms. Sullivan noted that appellant currently served as a police officer, which required him to be on his feet for 12 hours a day and wear heavy boots. She reported that he had had pain in his feet intermittently for several years; however, it became more persistent in April 2018.

By decision dated September 20, 2019, OWCP affirmed its prior decision, as modified, finding that the evidence of record contained a medical diagnosis establishing the medical component of fact of injury. The claim remained denied, however, as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To establish that an injury sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a foot condition causally related to the accepted factors of his federal employment.

OWCP received a series of reports dated September 6, 2018 through January 10, 2019 from Dr. Davis wherein she diagnosed plantar fasciitis, PTTD, Achilles tendinitis, and pronation syndrome due to constant painful feet that worsened with walking. In her September 13, 2018 note, Dr. Davis indicated that appellant had been unable to perform his agility test due to pain from walking in boots for the last seven years and recommended that he be placed on desk duty indefinitely. While she provided multiple medical diagnoses, she did not offer an opinion as to whether appellant's employment caused or aggravated his conditions,⁸ nor did she specifically discuss how any medical findings supported that his conditions resulted from the accepted employment factor of wearing combat boots while walking at work. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ This evidence is therefore insufficient to meet appellant's burden of proof.

Appellant also submitted notes from a physical therapist and a nurse practitioner, in support of his claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁰

⁶ S.C., Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ J.L., Docket No. 18-1804 (issued April 12, 2019).

⁸ L.B., Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *Id.*

¹⁰ Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *B.J.*, Docket No. 18-1276 (issued February 4, 2019); *J.R.*, Docket No. 18-0801 (issued November 26, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.¹¹

As the medical evidence of record does not contain rationalized medical evidence establishing a foot condition causally related to the accepted employment factors, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a foot condition causally related to the accepted factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 11, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Id.*